

## Comptroller of the Currency, Treasury

## § 18.10

and underlying causes of enforcement actions; business plans; material changes in balance sheet and income statement items; and future plans.

(d) *Disclaimer.* The following legend shall be included in the annual disclosure statement to advise the public that the OCC has not reviewed the information contained therein:

This statement has not been reviewed, or confirmed for accuracy or relevance by the Office of the Comptroller of the Currency.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57332, Nov. 15, 1995]

### § 18.5 Alternative annual disclosure statements.

The § 18.3(a) requirement to prepare an annual disclosure statement is satisfied:

(a) In the case of a national bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), by its annual report to security holders for meetings at which directors are to be elected;

(b) In the case of a national bank with audited financial statements, by those statements, provided all of the required information is included;

(c) In the case of a bank subsidiary of a one-bank holding company, by an annual report of the one-bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission or by schedules from the holding company's consolidated financial statements on Form FR Y-9c pursuant to Regulation Y of the Federal Reserve Board (12 CFR part 225). Such schedules must be comparable to the Call Report schedules enumerated in § 18.4(a). In either case, not less than 95 percent of the holding company's consolidated total assets and total liabilities must be attributable to the bank and the bank's subsidiaries.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57332, Nov. 15, 1995]

### § 18.6 Signature and attestation.

A duly authorized officer of the bank shall sign the annual disclosure statement and shall attest to the correctness of the information contained in the statement if the financial reports

are not accompanied by a report of an independent accountant.

### § 18.7 Notice of availability.

(a) *Shareholders.* In its notice of the annual meeting of shareholders, each national bank shall indicate that any person may obtain the annual disclosure statement from the bank, and shall include the address and telephone number of the person or office to be contacted for a copy. The first copy shall be provided without charge.

(b) *Depositors, Other Security Holders, and the General Public.* In the lobby of its main office and each branch, each national bank shall prominently display, at all times, a notice that any person may obtain the annual disclosure statement from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a copy. The first copy shall be provided without charge.

### § 18.8 Delivery.

Each national bank shall, after receiving a request for an annual disclosure statement, promptly mail or otherwise furnish the statement to the requester.

### § 18.9 Disclosure of examination reports.

Except as permitted under part 4 of this chapter, a national bank may not disclose any report of examination or report of supervisory activity, or any portion thereof, prepared by the OCC. The bank also shall not make any representation concerning such report or the findings therein.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57333, Nov. 15, 1995]

### § 18.10 Prohibited conduct and penalties.

(a) No national bank or institution-affiliated party shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of material or required information in the annual disclosure statement; or

(2) Represent that the OCC, or any employee thereof, has passed upon the

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accuracy or completeness of the annual disclosure statement.

(b) For purposes of this part, *institution-affiliated party* means:

(1) Any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, a national bank;

(2) Any other person who has filed or is required to file a change-in-control notice with the OCC under 12 U.S.C. 1817(j);

(3) Any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the OCC (by regulation or case-by-case) who participates in the conduct of the affairs of a national bank; and

(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in:

(i) Any violation of any law or regulation;

(ii) Any breach of fiduciary duty; or

(iii) Any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the national bank.

(c) Conduct that violates paragraph (a) of this section also may constitute an unsafe or unsound banking practice or otherwise serve as a basis for enforcement action by the OCC including, but not limited to, the assessment of civil money penalties against the bank or any institution-affiliated party who violates this part.

[60 FR 57333, Nov. 15, 1995]

### § 18.11 Safe harbor provision.

The provisions of § 18.10(c) shall apply unless it is shown by the person or bank involved that the information disclosed was included with a reasonable basis or in good faith.

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